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REGION 5
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

'99 JUL 12 P2:56

In the matter of:

St. Lawrence Church and School
Utica, Michigan,

and

Industrial Waste Cleanup, Inc.
Detroit, Michigan,

Respondents.

)
) US
) PROCEEDING TO ASSESS
) DOCKET No. CAA-5- '99-019
) REGION 5
)
)
) Proceeding to Assess
) Administrative Penalty
) Under Section 113(d)
) of the Clean Air Act
) 42 U.S.C. § 7413(d)
)
)
)

ADMINISTRATIVE COMPLAINT AND NOTICE
OF PROPOSED ORDER ASSESSING A PENALTY

This administrative action is instituted pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), against Respondents, St. Lawrence Church and School (St. Lawrence) and Industrial Waste Cleanup, Inc. (IWC), for administrative penalties.

Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator to issue an Administrative Order assessing a civil administrative penalty against any person(s), whenever, on the basis of any available information, the Administrator finds that such person(s) has violated or is violating any requirement or prohibition of Title III of the Act (in addition to other requirements and prohibitions). The Complainant is, by lawful delegation, the Director of the Air and Radiation Division of the United States Environmental Protection Agency (U.S. EPA), Region 5.

STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b), the Administrator of U.S. EPA listed asbestos as a hazardous air pollutant and prescribed a national emission standard for hazardous air pollutants (NESHAP) for asbestos.
2. The NESHAP for asbestos includes regulations governing the emission, handling, and disposal of asbestos. These regulations are codified at 40 C.F.R. Part 61, Subpart M, §§ 61.140 to 61.157.
3. The NESHAP for asbestos applies to each owner or operator of a renovation activity if the combined amount of regulated asbestos containing material (RACM) is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components. 40 C.F.R. § 61.145(a).
4. "Owner or operator" of a renovation activity means any person who owns, leases, operates, controls, or supervises the facility being renovated, or any person who owns, leases, operates, controls, or supervises the renovation operation, or both. 40 C.F.R. § 61.141.
5. "Renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos containing material (RACM) from a facility component. 40 C.F.R. § 61.141.
6. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
7. "Facility" means any institutional, commercial, public, industrial

or residential structure, installation or building. 40 C.F.R. § 61.141.

8. "Asbestos" means, among other things, the asbestiform varieties of serpentinite (chrysotile). 40 C.F.R. § 61.141
9. "Asbestos containing waste materials" means friable asbestos waste material, and, as applied to demolition or renovation operations, also means regulated asbestos-containing material waste and materials contaminated with asbestos. 40 C.F.R. § 61.141

GENERAL ALLEGATIONS

10. The Statutory and Regulatory Background statements contained in paragraphs 1 through 9 are incorporated herein by reference.
11. For the purposes of this complaint, "Respondents" refers to both St. Lawrence and IWC.
12. St. Lawrence is a person as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
13. On or about May, 1997, St. Lawrence owned, leased, and/or controlled the buildings located at 44633 Utica Road in Utica, Michigan (the site).
14. The site is a campus of institutional buildings and is therefore a facility as defined at 40 C.F.R. § 61.141.
15. The site contains a church, which is an institutional building, and is therefore a facility as defined at 40 C.F.R. § 61.141 (church facility).
16. The site also contains a school building or buildings, which is also a facility as defined at 40 C.F.R. § 61.141 (school facility).

17. St. Lawrence is the "owner" of the campus and the facilities at all times relevant to this complaint.
18. As a corporation organized under the laws of the State of Michigan, IWC is a person as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
19. IWC has a place of business at 12838 Gavel, Detroit, Michigan 48228.
20. In May of 1997, IWC contracted with St. Lawrence to perform demolition/renovation work at the facilities.
21. The agreement provided that IWC would perform certain asbestos removal activities in the church, including: removing all ACM within the church boiler room and adjoining tunnel system, removing approximately 100 sq. ft. of boiler and tank insulation and removing approximately 1,200 ln. ft. and associated fittings of pipe insulation.
22. The agreement also provided that IWC would remove certain ACM within the school facility, including: removal of 48 linear feet within tunnels in 12 separate areas within the school and removal of approximately 460 linear feet of pipe insulation within the locker room of the school.
23. IWC later billed St. Lawrence for work performed at the church and school facilities from May 3 through July 15, 1997.
24. IWC was the operator at the facilities from May 3 to July 15, 1997.

COUNT I

25. The allegations contained in Paragraphs 1 through 24 are

incorporated herein by reference.

26. 40 C.F.R. §61.145(b)(1) requires each owner or operator of a demolition or renovation activity to provide the Administrator with written notice of intention to renovate or demolish within 10 working days before asbestos stripping or removal work or any other activity begins.
27. Respondents notified the State of work to be done in the church facility on May 6, 1997.
28. Respondents provided an amended notice to the State via fax for work to be performed at the church facility on approximately June 2, 1997.
29. At no time before or during the demolition/renovation did Respondents provide the Administrator with written notice of intent to renovate or demolish portions of the school facility.
30. Respondents' failure to notify the Administrator of their intention to demolish/renovate areas within the school facility constitutes a violation of 40 C.F.R. §61.145(b)(1).
31. Respondents' violation of 40 C.F.R. § 61.145(b)(1) subjects them to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. Section 7413(d).

COUNT II

32. The allegations contained in Paragraphs 1 through 24 are incorporated herein by reference.
33. 40 C.F.R. §61.145(c)(6) requires that owners or operators of a demolition or renovation activity adequately wet the RACM and

ensure that it remains wet until collected and contained or treated in preparation for disposal.

34. In May of 1997, Respondents conducted a demolition/renovation at the church facility, as defined at 40 C.F.R. §61.141.
35. On or about May 28, 1997, an inspector visited the church facility, and inspected a boiler room in the basement.
36. On that date, the inspector found white debris scattered on the floor of the boiler room.
37. The white debris was dry and was friable.
38. Subsequent testing of the white debris revealed it to be 30 percent (%) chrysotile.
39. The white debris was RACM, as defined in 40 C.F.R. § 61.141.
40. In May 1997, Respondents did not adequately wet the RACM and did not ensure that it remained wet until collected and contained or treated in preparation for disposal.
41. Respondents' failure to adequately wet the RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal constitutes a violation of 40 C.F.R. §61.145(c)(6).
42. Respondents' violation of 40 C.F.R. § 61.145(c)(6) subjects them to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. Section 7413(d).

COUNT III

43. The allegations contained in Paragraphs 1 through 24 are incorporated herein by reference.

- 44. 40 C.F.R. § 61.150(a)(iii) requires that owners or operators of a demolition or renovation activity seal all asbestos containing waste material in leak-tight containers.
- 45. In May of 1997, Respondents conducted a demolition/renovation at the church facility, as defined at 40 C.F.R. § 61.141.
- 46. On or about May 28, 1997, an inspector from the State of Michigan inspected the boiler room of the church facility.
- 47. On that date, the inspector found white debris scattered on the floor of the boiler room.
- 48. The debris was dry and was friable.
- 49. Subsequent testing revealed the debris to be 30% chrysotile.
- 50. The white debris was asbestos containing waste material, as defined in 40 C.F.R. § 61.141.
- 51. In May of 1997, Respondents did not seal all asbestos containing waste material in leak-tight containers.
- 52. Respondents' failure to seal all asbestos containing waste material in leak-tight containers constitutes a violation of 40 C.F.R. § 61.150(a)(iii).
- 53. Respondents' violation of 40 C.F.R. §61.150(a)(iii) subjects them to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. Section 7413(d).

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

- 54. Pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and the Civil Monetary Inflation Adjustment Rule, 61

Fed. Reg. 69360, the Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000 for, among other things, violations of Section 112 of the Act, 42 U.S.C. § 7412. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), provides that in determining the amount of any civil penalty to be assessed, the Administrator shall take into consideration the size of the business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, the payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

55. After considering these factors, U.S. EPA proposes that Respondents be assessed a civil penalty of **\$49,000**. This proposed penalty has been calculated in accordance with the "Clean Air Act Stationary Source Civil Penalty Policy" (October 25, 1991) and the "Asbestos Demolition and Renovation Civil Penalty Policy" (May 11, 1992) (Penalty Policies). Copies of these Penalty Policies accompany this Complaint. Under the Penalty Policies, U.S. EPA considers the seriousness of the alleged violations. Since asbestos is a hazardous air pollutant that is known to cause death and serious irreversible illness, the Penalty Policies generate an appropriately high factor associated with work practice violations. The proposed penalty assessed for actual or possible harm is determined by the

particular regulatory requirements violated, the duration of the violation, and the amount of asbestos involved in the operation.

56. Under the Penalty Policies, U.S. EPA considers the economic benefit a violator derives from the alleged violations in determining the appropriate penalty. A violator cannot be allowed to derive monetary profit from noncompliance with the Act, both for deterrence purposes and because other regulated entities have incurred expenses in complying with the Act.
57. Also under the Penalty Policies, U.S. EPA considers the size of a violator's business in determining the appropriate penalty.
58. Respondents shall pay the assessed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondents shall also include on the check the name of the case and the docket number. Respondents shall simultaneously send copies of the check and the transmittal letter to:

Sherry A. Finley
Air and Radiation Division (AE-17J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Kathleen Schnieders
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

OPPORTUNITY TO REQUEST A HEARING

59. Section 113(d) of the Act, 42 U.S.C. § 113(d) requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, you must specifically make such request in your Answer, as discussed below.
60. The hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (February 4, 1992), a copy of which accompanies this Complaint.

ANSWER

61. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period runs shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a deadline occurs on

such a day, in which case the deadline shall be extended to the next business day. Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding the particular factual allegation which you cannot admit, deny or explain.

62. Your Answer also specifically shall state:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts which you intend to place at issue; and
- c. Whether you request a hearing, as discussed above.

64. Failure to admit, deny, or explain any factual allegation in this Complaint shall constitute admission of the alleged fact.

65. You must send a copy of your Answer and any documents filed subsequently in this action to Kathleen Schnieders, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone her at (312) 353-8912.

66. If you fail to file a written Answer within 30 calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing under the Act. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator

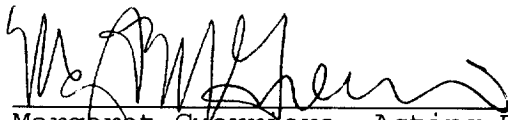
pursuant to 40 C.F.R. §§ 22.27 or 22.31.

SETTLEMENT CONFERENCE

67. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Peter B. Spyropoulos, Chief, Air Enforcement and Compliance Assurance Section (MI/WI), Air and Radiation Division (AE-17J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone him at (312) 886-6073.
68. Your request for an informal settlement conference does not extend the 30 calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a Consent Order. Your agreement to a Consent Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

69. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Clean Air Act, 42 U.S.C. § 7401 et seq., or any other Federal, State, or local law or regulation.

7/8/99
Date


Margaret Guerriero, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

JUL 12 1999

I certify that on _____, I deposited in the U.S. Mail, certified mail, return receipt requested, a copy of a Clean Air Act Administrative Complaint, a copy of the Penalty Policies and the Part 22 Rules of Practice addressed to the following Respondents:

Father Tim Szott, Pastor
St. Lawrence Church and School
44633 Utica Road
Utica, Michigan 48317

Certified Mail Number: P140 777022

AND

Juan Quiroz, President
Industrial Waste Cleanup, Inc.
12838 Gavel
Detroit, Michigan 48228

Certified Mail Number: P140 777021

I certify that copies of the Clean Air Act Administrative Complaint was sent by first class mail to:

Barbara Rosenbaum, Chief
Compliance and Enforcement Section
Air Quality Division
Michigan Department of Environmental Quality
P. O. Box 30260
Lansing, Michigan 48909-7760

Wendy Barrott, Director
Air Quality Management Division
Wayne County Department of Environment
640 Temple, Suite 700
Detroit, Michigan 48201

U.S. DEPT. OF JUSTICE
PROTECTOR OF THE ENVIRONMENT
REGION 7

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I certify that the original of the Clean Air Act Administrative Complaint was hand-delivered to:

Regional Hearing Clerk
77 West Jackson Boulevard
Chicago, Illinois 60604

7/12/99
Date

Shanee Rucker
Shanee Rucker, Secretary
AECAS (MI/WI)